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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FCC 93-372

In the Matter of  
Implementation of Sections of  
the Cable Television Consumer  
Protection and Competition Act  
of 1992

Rate Regulation

MM Docket 92-266

#### ORDER

By the Commission: Chairman Quello issuing a separate statement;  
Commissioner Barrett concurring in part and dissenting in part and  
issuing a statement.

Adopted: July 27, 1993

Released: July 27, 1993

#### I. Introduction

1. In this Order, we move from October 1, 1993 to September 1, 1993 the effective date of cable service rate regulation.<sup>1</sup> To

<sup>1</sup> In this Order, we reconsider, on our own motion, certain decisions made in the Report and Order, the Preemption Order, and the Deferral Order issued in this docket. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, MM Docket 92-266, Report and Order and Further Notice of Proposed Rulemaking, FCC 93-177 (released May 3, 1993) ("Report and Order"); Order, FCC 93-264, 8 FCC Rcd 3652 (1993) ("Preemption Order"); Order, FCC 93-304 (released June 15, 1993) 58 Fed. Reg. 33560 (June 18, 1993) ("Deferral Order"). In light of the pending petitions for reconsideration and clarification of the Report and Order, the Preemption Order, and the Deferral Order, the Commission retains jurisdiction to grant reconsideration on its own motion. See 47 U.S.C. Section 405; 47 C.F.R. Section 1.108; Central Florida Enterprises v. FCC, 598 F.2d 37, 48, n. 51 (D.C. Cir. 1978), cert. dismissed 441 U.S. 957 (1979); Rebecca Radio of Marco, 5 FCC Rcd 2913, 2914, n.8 (1990). In the alternative, we note that the matters addressed herein are inherently time-sensitive and the exigencies of the situation require them to be decided now in order to ensure a prompt and smooth transition to cable rate regulation. Accordingly, we find for good cause that further notice and comment on these matters would be impracticable, unnecessary and contrary to the public interest. See 5 U.S.C. Section 553(b) (B).

support the transition to this new effective date, we additionally: (1) preempt state and local, and waive our own, notice requirements to permit cable operators to restructure rates and service offerings up until September 1, 1993 without prior notice to subscribers; (2) provide that cable operators unable to conform subscriber bills to reflect restructured rates and services effective September 1, 1993, must do so as soon as practically possible, but no later than October 1, 1993; and (3) extend to November 15, 1993, the time period for cable operators to respond to an initial notice of regulation of the basic tier by local franchising authorities, and to an initial complaint concerning a cable programming service tier filed at the Commission, received between September 1, 1993 and October 15, 1993.'

## II. Background

2. In the Report and Order, we established rules for implementing cable service rate regulation as required by the Cable Act of 1992. In so doing, we selected June 21, 1993 as the effective date of regulation. At the same time, in order to assure that rates for cable service did not rise pending implementation of rate regulation, we froze rates for regulated cable service in effect on April 5, 1993 until August 3, 1993.' Subsequently, we examined the feasibility of implementing cable service rate regulation in light of the Commission's funding shortfall for Fiscal Year 1993.' We observed that the Cable Act of

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For further background information on cable rate regulation, see also Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, Sections 3, 9, 14, 106 Stat. 1460 (1992), amending Sections 623, 612 and 622(c) of the Communications Act, as codified at 47 U.S.C. Sections 543, 532 and 542(c) ("Cable Act of 1992").

' This Order does not effect the November 15, 1993 termination date of the rate freeze. See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Order, FCC 93-176, 8 FCC Rcd 2921 (1993) ("Freeze Order"), clarified, 8 FCC Rcd 2917 (1993), and extended to November 15, 1993, in the Deferral Order. Continuing the rate freeze will assure that local franchising authorities have sufficient time to become certified and to adopt and implement regulations in response to the regulations we adopted in the Report and Order. We believe that we should maintain the current termination date of the freeze because local authorities may have established implementation plans based on an effective date of October 1, 1993.

' Freeze Order, at para. 5.

' Deferral Order, at para. 2.

1992 imposes significant new responsibilities on the Commission including the establishment and implementation of, and continuing oversight over, a comprehensive national regulatory framework for regulation of cable service rates. We determined that, at a time when the Commission was already experiencing a severe funding shortfall probably necessitating furloughs of all employees, it would not be possible, as a practical matter, for the Commission to implement cable service rate regulation by the June 21, 1993 effective date. We stated that a deferral of rate regulation until October 1, 1993 would provide an opportunity for the Commission to obtain a supplemental appropriation and would afford cable operators and franchise authorities additional time to take steps necessary to implement rate regulation. We thus deferred the effective date of rate regulation from June 21, 1993 until October 1, 1993.<sup>4</sup> We also extended the rate freeze until November 15, 1993.<sup>5</sup>

3. On June 30, 1993, however, Congress authorized a supplemental appropriation of \$11.5 million for the Commission's implementation of the Cable Act of 1992 during Fiscal Year 1993.<sup>6</sup> The Conference Report accompanying the appropriation expressed the intent of Congress that the Commission set September 1, 1993 as the new effective date of cable rate regulations, including refund liability.<sup>7</sup> Specifically, the Conference Report stated:

[T]he conferees intend that the Commission shall establish a date as soon as possible after enactment of this Act, but that date shall be no later than September 1, 1993, as the date from which consumers may obtain refunds of excessive rates for the basic service tier of cable television service and for cable programming services.<sup>8</sup>

### III. Effective Date of Cable Service Rate Regulation

4. In view of the supplemental funding we have now received, and in accordance with the Conference Report approving the appropriation, we are today establishing September 1, 1993 as the effective date for cable rate regulation, including potential refund liability. On balance, we believe that the June 30 supplemental appropriation has reduced the necessary period for

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<sup>4</sup> Deferral Order, at para. 4.

<sup>5</sup> Deferral Order, at para. 5.; see n.2, supra.

<sup>6</sup> Public Law 10350 (passed by Congress June 30, 1993, signed into law July 2, 1993).

<sup>7</sup> 139 Cong. Rec. H4377 (June 30, 1993).

<sup>8</sup> Id.

deferral of cable service rate regulation. An earlier effective date will also bring the benefits of rate regulation, including substantial savings, to consumers at an earlier time, which was a central purpose of the legislation. We also believe that the transition mechanisms that we are adopting today will sufficiently enable franchising authorities and the Commission to begin rate regulation in advance of October 1, 1993."

5. Under this effective date, cable operators will be subject to potential refund liability as of September 1, 1993 for the basic service tier. Refund liability for the cable programming service tier will begin running from the date a valid complaint is filed with the FCC.<sup>11</sup> Such complaints may be filed on or after September 1, 1993. In addition, effective September 1, 1993, the initial date of regulation of the basic service tier will be the date of notice of regulation of the tier by local franchising authorities. The initial date of regulation of a cable programming service tier will be the date on which a valid complaint is filed with the Commission concerning rates for the tier.<sup>12</sup> These dates are significant because rates in effect on the initial date of

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<sup>11</sup> Consumer Federation of America, et. al. ("CFA") has filed a petition requesting that we permit immediate implementation of rate regulation by cable subscribers by permitting subscribers to pay the current billed amount reduced by 15%. Emergency Petition for Immediate Implementation of Emergency Rule Permitting Immediate Rate Regulation, filed by Consumer Federation of America, Media Access Project and Public Citizen and Center for Media Education (filed July 21, 1993) ("CFA Petition"). The CFA proposal is inconsistent with the benchmark approach the Commission adopted, and cannot be reconciled with the Act's design which vests local authorities with regulation of basic rates, and the FCC with regulation of the upper tier rates. Moreover, we do not believe that CFA's suggestion presents a practical alternative for immediate implementation of cable rate regulation because it would require supervision and evaluation of potentially millions of individual consumer-effectuated rate reductions. For example, if we were to adopt CFA's proposal, extraordinarily difficult administrative problems in the future would occur in fashioning and authorizing refunds for overcharges and rebillings for undercharges if either the Commission or local franchising authorities determined that such a 15% offset was not warranted, either in whole or part. We believe that the requirements and procedures established in the Report and Order are preferable to the CFA approach for achieving reasonable rates for cable service. In addition, there is no record support in this proceeding for the CFA proposal. Accordingly, we deny the CFA Petition.

<sup>11</sup> See Report and Order, at paras. 371-381.

<sup>12</sup> See id. at para. 352-356.

regulation are the rates that are compared to the benchmark for purposes of assessing whether such rates are above permitted levels." Moreover, rates below the benchmark on the initial date of regulation are capped at that level."

#### IV. Transition Mechanisms

##### A. Preemption and Waiver of Notice Requirements

6. We have previously expressed concern that notice requirements contained in some franchise agreements or in state or local laws or regulations could make it practically impossible for cable operators to meet such notice obligations, while at the same time implementing required rate adjustments." Specifically, in the June Preemption Order, we concluded that operators could not, as a practical matter, react to the new regulatory scheme and fully implement responsive rate adjustments within the allotted time and still give subscribers one or more months notice of those rate adjustments, although we encouraged operators to notify subscribers and proper authorities in advance of rate adjustments as soon as possible." We therefore preempted state and local notice requirements to the extent that they required notice of such adjustments before June 21, 1993.

7. We believe the same circumstances exist in view of the September 1 effective date that we are establishing in this Order. Accordingly, consistent with our prior action, we hereby preempt local and state notice requirements until September 1, 1993." We do not preempt any local or state notice requirements to the extent they apply on or after September 1, 1993. In addition, for the same

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<sup>13</sup> See id. at paras. 223-232.

<sup>14</sup> See id.

<sup>15</sup> Preemption Order, at para. 3.

<sup>16</sup> Id.

<sup>17</sup> Several petitions have been filed seeking similar relief. See Petition for Clarification of June 15, Order, filed by Continental Cablevision, Inc. (filed June 22, 1993); Petition in Support of Petition for Clarification, filed by Cablevision Industries Corporation, Comcast Cable Communications and Cox Cable Communications (filed July 2, 1993); and Comments in Support of Petition for Clarification or, Alternatively, Petition for Reconsideration, filed by Tele-Communications, Inc. (filed July 19, 1993); Emergency Request for Declaratory Ruling or Clarification, filed by Media General Cable of Fairfax (filed June 22, 1993). Based on the actions we are taking in this Order, we hereby dismiss these petitions, without prejudice as moot.

reasons, we are waiving our own notice requirements until September 1, 1993." These actions are within the scope of our authority under the Cable Act of 1992 and are necessary to achieve prompt and smooth transition to rate regulation as of the new effective date." Indeed, the notice requirements are inconsistent with the federal interests in such a transition.

8. Accordingly, cable operators may establish new rates, rate structures, and service offerings by taking reasonable steps, such as public notices in newspapers and on-screen messages over the cable system, to announce such new offerings at any time prior to 12:01 a.m., September 1, 1993. Such new offerings will be deemed to be "in effect" at that time, or at such time specified in the announcement, but in no event later than September 1, 1993.

#### B. Billing Cycle Requirements

" Cable operators must provide written notice to subscribers at least 30 days before any proposed rate increase takes effect for the basic service tier or associated equipment, and franchising authorities must be informed, in writing, at least 30 days before any proposed rate increase of any changes in rates for cable programming service or associated equipment. 47 C.F.R. Sections 76.932 and 76.964. Additionally, our customer service standards require that consumers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Section 76.309(c)(3)(i)(B) of our rules requires that notice must be given to subscribers a minimum of 30 days in advance of such changes if they are within the control of the cable operator. Additionally, under the customer service provisions, cable operators are under an obligation to notify subscribers 30 days in advance of any significant changes in other information regarding products and services offered; prices and options for programming services and conditions of subscription to programming and other services; installation and service maintenance policies; instructions on how to use the cable service; channel positions of programming carried on the system; and billing and complaint procedures. 47 C.F.R. Section 76.309(c)(3)(i)(B). For the reasons discussed above, we waive these 30 day notice provisions in conjunction with the September 1 effective date for cable operators who are unable to comply with the provisions and still retier or restructure their offering up until September 1, 1993. Our waiver and preemption do not extend to operators who adjust their rates prior to 30 days before September 1, 1993, since these operators can, and must, comply with the 30 day notice requirements and still effectuate rate changes and changes in billing practices.

" See City of New York v. FCC, 486 U.S. 57 (1988); Fidelity Federal Savings and Loan Assoc. v. de la Cuesta, 458 U.S. 141 (1982).

9. We also hereby establish procedures for dealing with billing cycle issues raised by the September 1 effective date. We believe that cable systems, where possible, should begin billing subscribers for new rates beginning on or before the new effective date. However, as we noted in earlier orders concerning implementation of cable service rate regulation, we are aware that the centralized billing practices used by most of the cable industry may make it difficult for consumers to receive bills for service provided on, or shortly after September 1, 1993, that reflect new rates and service offerings established shortly before that date." Accordingly, operators who are able to conform their bills to reflect new rates effective September 1 should do so. Operators unable to conform their bills to reflect new rates and services beginning September 1 will be required to make those changes as soon as it is practically possible to do so, but in no event later than October 1, 1993, in order to have unbilled rates deemed "in effect."<sup>20</sup> Only in these circumstances, will we look to the rate in effect on September 1, 1993 rather than the rate actually billed on that date for purposes of evaluating the reasonableness of rates so long as the cable operator makes necessary corrections to subscriber bills promptly.

C. Extension of Response Period

10. Under our rules, cable operators must respond to the

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<sup>20</sup> Deferral Order, at n.6.

<sup>21</sup> We require that where the announced rate is different from the rate actually billed before the cable operator is able to revise bills to reflect new rates and the cable operator seeks to have this rate deemed to be "in effect" for rate regulation purposes, the cable operator must make prospective billing adjustments to refund overcharges (and offset any undercharges) in a reasonable manner. Where possible, such adjustments should be made for the actual subscribers affected. However, they may also appropriately be made as billing adjustments to the class of tier subscribers or to all subscribers of the regulated cable service. See Report and Order, at n.378.

Several petitions have been filed seeking clarification of adjustments to the billing cycle after regulation begins. See Petition for Clarification or for Reconsideration of Order of May 14, 1993, filed by Continental Cablevision on May 20, 1993 (requesting clarification of billing cycles); Joint Comments In Support of Petition for Clarification, filed by Colony Communications, Inc. King Videocable Company, Multivision Cable TV Corp., and ParCable Inc. (filed June 25, 1993). Based upon the actions we take in this Order, we dismiss these petitions without prejudice as moot.

initial notice of regulation of the basic service tier by local franchise authorities, and to a complaint filed at the Commission concerning a cable programming services tier, within 30 days." By virtue of this change in the effective date, cable operators will now have significant new obligations to accelerate rate and service adjustments originally planned for October 1, 1993. Similarly, franchising authorities that intend to assert jurisdiction over cable systems may need additional time to prepare for initial regulation. Accordingly, we will extend until November 15, 1993 the time period for cable operators to respond to an initial notice of regulation of the basic tier, and to an initial complaint concerning a cable programming service tier, received between September 1, 1993 and October 15, 1993." This modification will neither delay the introduction of rate regulation nor permit rate increases, but will provide operators and regulators sufficient time to adjust to the new effective date. In addition, this action will not harm consumers because refund liability will be preserved as of the new effective date of our regulations."

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" 47 C.F.R. Sections 76.930(a); 76.945(a); and 76.956(a).

" This will provide a more reasonable transition period for implementation of rate regulation. Responses to notices of regulation of the basic service tier and to complaints concerning a cable programming service tier received after 12:01 a.m., October 16, 1993, must be filed within 30 days. 47 C.F.R. Sections 76.930(a), 76.945(a) and 76.956(a).

" See para. 5, supra.



V. Ordering Clauses

11. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), (j) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), (j) and 405, and Section 1.108 of the Commission's rules, 47 C.F.R. Section 1.108, that the Commission's rules adopted in Implementation of the Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking, MM Docket 92-266, FCC 93-177 (released May 3, 1993), SHALL BE EFFECTIVE September 1, 1993."

12. IT IS FURTHER ORDERED, that, effective upon publication in the Federal Register," any state or local requirements that cable operators give notice, prior to September 1, 1993, of rate changes intended to effectuate compliance with our rate regulations ARE PREEMPTED as described herein.

13. IT IS FURTHER ORDERED, that, effective upon release of this Order, Sections 76.932, 76.964, and 76.309(c)(3)(i)(B) of the Commission's rules ARE WAIVED until September 1, 1993.

14. IT IS FURTHER ORDERED, that, effective September 1, 1993, the time period for filing responses to the initial notice of regulation of the basic service tier, and to an initial complaint for a cable programming services tier received between September 1, 1993 through October 15, 1993, SHALL BE extended until November 15, 1993.

15. IT IS FURTHER ORDERED, that, effective September 1, 1993, cable operators unable to conform subscriber bills to reflect restructured rates and service effective September 1, 1993, ARE PERMITTED to make those changes as soon as it is practically possible, but no later than October 1, 1993.

16. IT IS FURTHER ORDERED, that the Emergency Petition for Immediate Implementation of Emergency Rule Permitting Immediate Rate Regulation filed by Consumer Federation of America, Media Access Project and Public Citizen and Center for Media Education,

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" In the event a summary of this Order is not published in the Federal Register 30 days in advance of September 1, 1993, we find good cause for making the rule changes discussed herein on less than 30 days notice. See 5 U.S.C. Section 553(d)(3). This action is necessary to ensure a prompt and smooth transition to cable rate regulation consistent with Congressional intent.

" To the extent necessary, for the reasons set forth in n.1, supra, we find good cause for making our preemption effective upon publication in the Federal Register. 5 U.S.C. Section 553(d)(3).

IS DENIED.

17. IT IS FURTHER ORDERED, that the Petition for Clarification of June 15. Order, filed by Continental Cablevision, Inc. (filed June 22, 1993); Petition in Support of Petition for Clarification, filed by Cablevision Industries Corporation, Comcast Cable Communications and Cox Cable Communications (filed July 2, 1993); and Comments in Support of Petition for Clarification or, Alternatively, Petition for Reconsideration, filed by Telecommunications, Inc. (filed July 19, 1993); Emergency Request for Declaratory Ruling or Clarification, filed by Media General Cable of Fairfax (filed June 22, 1993); Petition for Clarification or for Reconsideration of Order of May 14, 1993, filed by Continental Cablevision (filed May 20, 1993); and Joint Comments In Support of Petition for Clarification, filed by Colony Communications, Inc. King Videocable Company, Multivision Cable TV Corp., and ParCable Inc. (filed June 25, 1993), ARE DISMISSED WITHOUT PREJUDICE as moot.

FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

## Federal Communications Commission Record

### Separate Statement of Chairman James H. Quello

**In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 (Rate Regulation), MM Docket No. 92-266.**

This is a difficult decision.

If I were free to set the effective date of rate regulation based solely on what makes the most sense from an administrative standpoint, I would have let the October 1 date stand. But I do not have such freedom. I am required to balance all the factors facing the Commission; the enormity of the task and the potential for massive disruption of service must be weighed against the congressional desire that the date be moved, and against the prospect that failure to heed Conference Report language could have lead to additional budget cuts for the Commission.

I am committed to the complete and orderly implementation of the Cable Act in this year, as well as the next. Perhaps more importantly, I believe it is vital to uphold the integrity of the Commission, and to push forward on the many other statutory responsibilities with which we are charged. Accordingly, I chose not to gamble with the FCC's future by retaining the October 1 effective date.

The suggestions made by some that the Commission's actions regarding the effective date reflect a reluctance to implement that 1992 Cable Act are astonishing and ridiculous. The staff of this agency has labored around the clock since the Act's passage to produce the record number of difficult rules mandated by Congress. No one could seriously suggest that the Commission has deviated from the statutory design to unfairly favor the cable industry. At all times, the Commission has endeavored to follow congressional will, as expressed both before and since the passage of the Act.

The reasons the Commission changed the effective date in the first place have been thoroughly discussed elsewhere and I will not repeat them. See, e.g., *Congressional Record*, July 1, 1993 at H4472-73 (Statement of Chairman John D. Dingell). But considering all the factors

described above, the Commission is following the most responsible course.

Part of being responsible includes today's denial of Consumer Federation of America's *Emergency Petition for Immediate Implementation of Emergency Rule Permitting Immediate Rate Regulation*.<sup>1</sup> CFA proposed that the Commission issue an order authorizing cable subscribers to unilaterally withhold 15 percent of their next cable bills. Excessive withholdings would then be subject to Commission orders requiring the subscribers to reimburse the cable operators. Granting this petition would have completely disrupted the Commission's implementation plan and would have promoted chaos for the industry and consumers. The petition appeared to be more of an effort to grab headlines and to engage in self-aggrandizement than a serious plan for rate regulation.

The Consumer Federation of America's proposal would harm consumers because of the confusion it would create and because it would freeze the Commission's processes to a far greater extent than any plan that may have been suggested by the cable industry. But it underscores that organization's pathological disregard for the real world implications of its suggestions. For example, shortly after the Commission extended the effective date to October 1, CFA's legislative director called my office and angrily demanded that all FCC personnel be pulled off other duties to stuff envelopes so that rate regulation could be implemented immediately. When informed that this would mean halting work on important policy matters, such as video dial tone and PCS, among other issues, he replied, "I don't care."

Of course, no responsible policymaker could seriously consider such demands. And, fortunately, the Commission did not. This agency has a statutory obligation to regulate communications industries for the benefit of all the public, and is not obliged to accede to the demands of groups who, despite their pretensions, have not been appointed the bargaining agents for all consumers.

This is not to say that the Commission has been unaffected by our new regulatory responsibilities. All of our other statutory missions have suffered. But through a conscious effort to apply rational management techniques, we have been able to move forward. On July 22,

## **Federal Communications Commission Record**

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for example, President Clinton praised the Commission for its recent actions to promote new technologies including PCS.

Accordingly, I believe that the Commission's actions on the effective date for rate regulation, including denial of the CFA petition, serve the larger public interest embodied in the Communications Act.

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<sup>1</sup>CFA was joined by Media Access Project, Public Citizen and the Center for Media Education. Some among these groups have some familiarity with the Commission and should have known better than to sign on to such a transparently unrealistic proposal.

July 27, 1993

CONCURRING IN PART

AND

DISSENTING STATEMENT

OF

COMMISSIONER ANDREW C. BARRETT

RE: Implementation of the Cable Television Consumer Protection and Competition Act of 1992 -- Rate Regulation (Effective Date)

On June 11, 1993, the Commission announced its decision to defer cable rate regulation rules (rate regulation) pursuant to the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") from June 21, 1993 to October 1, 1993.<sup>1</sup> At that time, rate regulation was deferred due to (1) delays in the proposed supplementary budget for cable matters, (2) existing budget shortfalls for fiscal year 1992-1993, and (3) other resource constraints.<sup>2</sup> On July 6, 1993, Congress approved the Commission's \$11.5 million supplemental budget for fiscal year 1993, and directed the Commission to begin implementing rate regulations effective September 1, 1993.<sup>3</sup>

Today, the Commission moves the effective date for rate regulation, including consumer refunds, from October 1, 1993 to September 1, 1993. I understand my colleagues' decisions to expedite the effective date of rate regulations. I concur with their decision to the extent that more flexibility is provided to cable operators with respect to notice requirements, response time, and billing cycles. Clearly these actions attempt to mitigate the regulatory confusion caused by shifting the rate regulation effective date to September 1.

I dissent from this decision to the extent that it moves the effective date for rate regulation to September 1, 1993. I believe that the public interest is best served with respect to cable rate

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<sup>1</sup> The Commission's rate regulations were adopted in Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177, released May 3, 1993. In addition, the Commission ordered a 120-day freeze on rates for cable services, other than premium and pay-per-view service offerings.

<sup>2</sup> See Order, MM Docket No. 92-266, adopted June 11, 1993; released June 15, 1993. The freeze on cable rates was extended to November 15, 1993.

<sup>3</sup> See HR 2118.

regulation by considering both the potential for consumer savings as well as the need to provide certainty to consumers and the regulated cable industry on how rate regulation rules will be enforced. Thus, I believe that the Commission must implement rate regulations in an orderly and effective manner. To do otherwise undermines the integrity of the Commission's regulatory process, creates potential unintended consequences, and potentially creates false expectations among the consumer public. Thus, it is important to give the FCC sufficient time to refine its rate regulations in order to ensure that the rules are applied prudently, and to ensure that consumers understand the difference between legitimate complaints and frivolous complaints.<sup>4</sup>

As a primary consideration, I am concerned that the Order could undermine the integrity of our regulatory process and authority. The legislative directive to change the effective date does not constitute binding law. The Commission has discretion in setting an effective date for rate regulations, and should do so in a responsible regulatory manner.<sup>5</sup> Therefore, I believe that the Commission should have maintained an effective date that will coincide more closely with our ability to determine which rates are too high, and which consumer complaints are legitimate. To invite complaints without understanding these factors is not responsible regulatory behavior.

I believe the action today could create more regulatory confusion in the long term for several reasons. First, we are still in the process of completing several outstanding rulemakings, including: (1) the reconsideration of the benchmark and price cap mechanisms for cable rate regulation, and (2) cost-of-service standards that would enable certain cable operators to recover legitimate costs above the benchmark.<sup>6</sup> Given the extraordinary demands created

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<sup>4</sup> Hearing on Reauthorization of the FCC Before the Subcomm. on Telecomm. and Finance of the House Comm. on Energy and Commerce, 103rd Cong., 1st Sess. (1993).

<sup>5</sup> See n. 3, supra. See statement by Hon. John D. Dingell concerning the Conference Report on H.R. 2118, Congressional Record, July 1, 1993, p. H4472.

<sup>6</sup> See n. 1, supra. See also Notice of Proposed Rulemaking, MM Docket No. 93-215; adopted July 15, 1993; released July 16, 1993. In addition to its responsibilities to complete the reconsideration of the benchmark and price cap mechanism, and to complete the final rulemaking on cost-of-service standards, the Commission currently faces a number of other critical tasks and deadlines in implementing the 1992 Cable Act. For instance, the Commission is responsible to complete reconsiderations -- as well as to commence enforcement procedures -- of its rules regarding the retransmission consent, must carry, program access, customer service, equipment compatibility, and tier buy-through provisions of the 1992 Cable Act. The Commission must also complete its rulemaking regarding the

solely by these rulemakings, I am concerned that even the former October 1 deadline is an ambitious goal. I recognize that an additional 30-day period to October 1, 1993 may not be sufficient to allow the Commission to become fully prepared to enforce rate regulations. However, I do believe that the additional time would contribute to a more orderly process that would benefit consumers and the industry in the long term. Further, implementing the cable regulations -- especially the processing of consumer refunds -- involves major responsibilities for the Commission to hire and train additional staff, develop a new organization, and establish its procedures. None of these actions have been completed. I also am concerned by the continued drain on other Commission business from implementing the 1992 Cable Act proceedings.<sup>7</sup>

The change in the effective date also could seriously limit the Commission's ability to implement the cable regulations in a manner that avoids unintended consequences. In implementing the 1992 Cable Act, the Commission has been careful to follow the expressed intent of Congress. I acknowledge that the transition mechanisms discussed in the order -- including the preemption and waiver of local notice requirements as well as revised billing cycle requirements -- will ease some burdens as the rules take effect, but the lingering problems from unresolved rate regulation and cost-of-service standards still remain. I believe we must have the opportunity to balance consumer, economic, and industry factors in order to avoid unintended consequences, including: (1) reduced levels of cable service; (2) reduced economic activity among programmers, equipment suppliers, and other service vendors; (3) the complete demise of smaller businesses, including cable operators, due to rate regulations; and (4) withdrawal of funding resources for small to mid-size cable businesses.

I especially am concerned that the uncertainty associated with rate regulations could cause extreme difficulty for small cable companies. To the extent that small operators are more highly leveraged, and face some of the most significant rate reductions, such operators could fall behind other distributors in terms of investment and meeting debt obligations. I am also concerned that lenders may be likely to respond to the greater risk associated with small systems by placing more restrictions on how small operators use their funds, where such funds are available.<sup>8</sup> This concern is

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horizontal and vertical ownership limits that will govern the cable industry. Many of these actions will have direct or indirect impact on cable rates.

<sup>7</sup> Hearing on Reauthorization of the FCC Before the Subcomm. on Telecomm. and Finance of the House Comm. on Energy and Commerce, 103rd Cong., 1st Sess. (1993) (See statement of Andrew C. Barrett, Commissioner, FCC).

<sup>8</sup> John M. Higgins, "Rules Crunch, But Don't Strangle, Financing," Multichannel News, 6/14/93, p.60.

reinforced as lenders have stated that they are unlikely to lend new funds until the impact of the cable rules is quantified, and operators provide supportable forecasts.<sup>9</sup> The lenders noted that while the strongest cable operators will have financing options, the smaller cable operators will find all forms of capital elusive. Based on these indications, we must avoid an unintended result whereby larger, vertically integrated cable firms can absorb the regulations, while smaller, nonintegrated cable systems suffer dire consequences to their ongoing business operations.

Finally, I am concerned that the change in the effective date could increase the potential for unfulfilled expectations by consumers. Specifically, given that the Commission anticipates a mass of consumer complaints regarding cable rates, I am concerned many of these complaints could be rendered frivolous as a result of further refinements to the benchmark mechanism, or by the development of standards to permit the recovery of certain legitimate costs above the benchmark. Further, given the Commission's existing lack of staff and resources, I am concerned that the change in the effective date will raise questions by consumers regarding the timing or extent of any refunds, because a significant delay will likely occur before the Commission reasonably can process rate complaints. Thus, despite a well-intended effort to expedite relief to consumers by establishing a September 1, 1993 refund date, I believe that the Commission creates more regulatory confusion for the cable industry and potentially raises false expectations for the consumer; particularly until the basic details for implementing rate regulation and cost-of-service rules are resolved. Thus, I dissent to this aspect of the Order.

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<sup>9</sup> See June 21, 1993 letter in MM Docket No. 92-266 from 18 lending institutions representing \$17 billion in commitments. See also Broadcasting and Cable, June 28, 1993, p. 11.